

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TWITTER, INC.,
Petitioner,

v.

YOUTOO TECHNOLOGIES, LLC,
Patent Owner.

Case IPR2017-01131
Patent 8,464,304

**TWITTER, INC.'S OPPOSITION
TO PATENT OWNER'S MOTION FOR STAY**

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LIST OF PREVIOUSLY FILED EXHIBITS

Exhibits 1001-1019: Filed and served March 24, 2017 with Twitter's Petition for *Inter Partes* Review of U.S. Patent No. 8,464,304.

Exhibit 1020: Filed and served October 18, 2017 with Twitter's Unopposed Motion for *Pro Hac Vice* of Robert T. Cruzen.

I. INTRODUCTION

Petitioner Twitter, Inc. (“Petitioner”) hereby submits the following opposition to Youtoo Technologies, LLC’s Motion for Stay (Paper 20). This proceeding should not be stayed, because the stay provisions of 11 U.S.C. § 362(a) do not apply to this proceeding. This instituted *inter partes* review is a continuation of an action by the government to enforce the government’s regulatory power, and thus, this proceeding is exempt from stay under the explicit exception of 11 U.S.C. § 362(b)(4). Even if the Board believes a stay is appropriate, Youtoo’s strategic use of its bankruptcy filing as a pretext to seeking yet further delays and modification of the Scheduling Order should not be condoned, and the PTAB should deem Youtoo to have waived its opportunity to file a patent owner response if not filed by the current deadline.

As explained more fully below, the Board should not stay this proceeding.

II. THE BOARD SHOULD DENY THE MOTION FOR STAY

A. *Inter Partes* Review Proceedings Are Excluded From The Automatic Stay Under 11 U.S.C. § 362(b)(4)

Bankruptcy Code § 362(b)(4) provides in pertinent part that the filing of a petition under the Bankruptcy Code does not operate as a stay of:

[T]he commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit’s . . . regulatory power, including the enforcement of a judgment other than a money judgment

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obtained in an action or proceeding by the governmental unit to enforce such governmental unit's . . . regulatory power.”

11 U.S.C. § 362(b)(4).

This exception to the bankruptcy automatic stay applies where a proceeding (i) is brought or continued by a governmental unit and (ii) seeks to vindicate the public interest, as opposed to the private rights of a third-party. *See, e.g., I.T.C. v. Jaffe*, 433 B.R. 538, 543 (E.D. Va. 2010). Here, the instant inter partes review satisfies both of the requirements of 11 U.S.C. § 362(b)(4) and is therefore exempt from the automatic stay.

1. IPRs Are Proceedings By A Governmental Unit

First, an instituted IPR is a “continuation of an action...by a governmental unit.” 11 U.S.C. § 362(b)(4). The United States Patent and Trademark Office (“*USPTO*”) and the Patent Trial and Appeal Board are unquestionably governmental units created by Congress. *See* 35 U.S.C. §§ 1, 6.¹ An IPR involves two distinct

¹ The Bankruptcy Code defines a “governmental unit” as:

United States; State; Commonwealth; District; Territory; municipality; foreign state; department, *agency, or instrumentality of the United States* (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government.

11 U.S.C. § 101(27) (emphasis added).

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